

Burlington Department of Public Works Special Commission Meeting  
Final Minutes, 6 December 2016  
149 Church Street

**Commissioners Present:** Robert Alberry (*via phone*); Tiki Archambeau (Vice Chair); Jim Barr; Solveig Overby (*via phone until 7:55pm*); Jeff Padgett (Chair); Justine Sears. **Commissioners Absent:** Chris Gillman (Clerk).

**Item 1 – Call to Order – Welcome – Chair Comments**

Chair Padgett calls meeting to order at 6:34pm and makes opening comments.

**Item 2 – Agenda**

Commissioner Barr makes motion to approve agenda and is seconded by Vice Chair Archambeau.

Action taken: motion approved;

Commissioner Alberry: Aye

Vice Chair Archambeau: Aye

Commissioner Barr: Aye

Clerk Gillman: *not present*

Commissioner Overby: Aye

Chair Padgett: Aye

Commissioner Sears: Aye

**Item 3 – Public Forum (3 minute per person time limit)**

No member of the public speaks.

**Item 4 – Brown's Court Lot & Champlain College Development**

A) Communication by the Director of Public Works, Chapin Spencer, the Director of CEDO, Noelle MacKay, and the Assistant Director of DPW Parking & Traffic, Patrick Cashman, who speak on the city's disposition of the Brown's Ct surface lot to Champlain College for the Eagles Landing Project, bringing this to the Commission's attention because it involves the sale of a surface parking lot, new housing being developed in the city, an annual payment of fees to the city in the amount of \$260,000/year, the inclusion of parking in the development, the 28 November 2016 City Council decision to approve the execution of the revised sale, and apologizing to the Commission for the timing of this meeting.

B) Commission Questions

Commissioner Overby comments on questions she emailed to Director Spencer hoping to have them entered into the record, not agreeing with the sale of municipal property like this instead preferring something such as a long term lease, not agreeing with the short term process of this hearing, and not supporting the position being discussed.

Commissioner Sears asks if the project will include leased parking: the Champlain College Associate Vice President for CPAS, John Caulo, answers that parking will be a as-yet-to-be-determined combination and that students would be restricted from parking there; Director MacKay further answer that in the permits for this project it is clear 40 parking spaces will be available to the public.

Vice Chair Archambeau asks how the sale will negatively impact on the Traffic Fund: Director Spencer answers that it will only be a one-half of one-percent loss on the Traffic Fund, that creating more downtown residences is more important, and that reclaiming surface lots is a part of that process. Vice Chair Archambeau comments that instead of having a parking lot generating revenue for the Traffic Fund the Commission will now have to ask for handouts from the City Council: the Assistant City Attorney, Richard Haesler, responds that the Traffic Fund is a separate self-generating fund and that any

money from the sale of city property going through the City Council will have to be requested for said fund, and thus the suggested second motion requesting such being included in the meeting packet. Vice Chair Archambeau asks what the specific financial loss would be to the Traffic Fund with the sale of the lot: Director Spencer and Assistant Director Cashman answer it will be about \$18,000/year but that the Traffic Fund is healthier than ever. Vice Chair Archambeau asks what the impact will be with 40 parking spaces at least temporarily gone: Assistant Director Cashman answers that the city is looking into expanding 10-hour (brown top) meters onto adjacent streets by replacing 3-hour (blue top) meters with them; Director Spencer further answers that replacing those meters will require Commission approval soon. Vice Chair Archambeau asks how the project morphed from being a potential site for affordable housing in the original plan, dating from year 2000, to the current proposal; Director MacKay answers that the city tried for 8 years to collect proposals for affordable housing and then the recession occurred; City Attorney Haesler further answers that after the recession Champlain College approached the City Council with a student housing proposal in 2013; Vice President Caulo further answers that a certain percentage of the housing is inclusive to Pell-eligible students.

Commissioner Sears comments that the addition of student housing could relieve some of the housing pressure in the city; Vice President Caulo responds that Eagles Landing will account for 50 percent of Champlain College's efforts to construct 600 off-campus beds for its students.

Vice Chair Archambeau asks if Champlain College will be allowed to collect future revenues from parking: Assistant Director Cashman answers that is correct. Vice Chair Archambeau asks how parking rates will be regulated: Director Spencer answers regulation will be up to Champlain College but they will cooperate with the Downtown Parking Management District. Vice Chair Archambeau asks how long there will be 40 fewer spaces; Vice President Caulo answers they would likely not be replaced until the end of the 18-month construction due to the nature of the project but that the college would try to open some back up as construction allows.

Commissioner Barr comments that parking rates are dictated by market forces and speaks in favor of adding language to the motion asking the City Council to approve sales funds for the Traffic Fund.

Chair Padgett comments that the Commission should consider the language of any recommendation due to dates of the transaction plan being so recent as listed in the packet; City Attorney Haesler responds that the dates of the transaction plan are mislabeled in the packet and the plan had come before the Commission in October 2015. Chair Padgett comments that the Commission is required by City Charter to make a recommendation to the City Council on this issue.

Commissioner Sears asks to go over some of the Commissioner Overby's emailed comments. Director MacKay responds to Commissioner Overby's comment on Page 28 *Development Agreement* ("Annual development fee of \$260,000 for 20 years. This amount should not remain static for 20 years but should increase by a percentage each year to account for anticipated increases in municipal tax rate.") that the annual development fee of \$260,000 for 20 years was deemed fair after review; Vice President Caulo further responds that this is a debt payment and not a tax; Vice Chair Archambeau asks if Champlain College can sell this property to another party after the sale to which Director MacKay answers that Champlain College can't convey it to another party unless the city okays it first. Director MacKay responds to Commissioner's Overby's comment on Page 39 *Conditions of Grant* ("Is the Eagles Landing Project to be built on the combined properties, identified here as 'a multi-family residential project that includes commercial retail space' a project that serves a college function?") that the project will be built on the both pieces of property. Director MacKay responds to Commissioner Overby's comment on Page 34 *Reimbursement Agreement* ("Except \$466, 877 proposed \$1.1 million sales price will be spent on CAP remediation of property. Net revenue to city for sale would then only be \$633, 123.") that the city will reimburse Champlain College for remediation and that when an assessment was original done the property was assessed at \$900,000; Vice President Caulo further responds that when the original assessment was done the property was presumed to be a clean site which in subsequent years has been discovered to not be the case due to soil contamination which has affected the price.

C) Public Comment

No member of the public speaks.

D) Commissioner Discussion

Chair Padgett comments on crafting the language of the motion; City Attorney Haesler responds that it is preferable from the City's point-of-view if the Commission can either give thumbs up or thumbs down for recommending sale in one motion and then create a second motion which asks for funds to be appropriated. Chair Padgett comments on whether the City Council can choose to abide or not abide by the Commission's recommendation anyways.

*\*\*Commissioner Overby leaves\*\**

E) Motion made by Vice Chair Archambeau to recommend to the City Council the sale to Champlain College of the Brown's Court parking lot as proposed and consider using the remaining proceeds of the sale for capital upgrades of the city's parking system prior to the dispersment of said funds.

Seconded by Commissioner Barr.

Discussion

Action taken: motion approved;

Commissioner Alberry: Aye

Vice Chair Archambeau: Aye

Commissioner Barr: Aye

Clerk Gillman: *not present*

Commissioner Overby: *not present*

Chair Padgett: Aye

Commissioner Sears: Aye

Motion made by Commissioner Barr to acknowledge Commissioner Overby's comments she had emailed and acknowledge that she made it clear she was against the proposal.

Seconded by Vice Chair Archambeau.

Discussion

Action taken: motion approved;

Commissioner Alberry: Aye

Vice Chair Archambeau: Aye

Commissioner Barr: Aye

Clerk Gillman: *not present*

Commissioner Overby: *not present*

Chair Padgett: Aye

Commissioner Sears: Aye

**Item 5 – Adjournment & Next Meeting Date – December 21, 2016**

Motion to adjourn made by Vice Chair Archambeau and seconded by Commissioner Barr.

Action taken: motion approved;

Commissioner Alberry: Aye

Vice Chair Archambeau: Aye

Commissioner Barr: Aye

Clerk Gillman: *not present*

Commissioner Overby: *not present*

Chair Padgett: Aye

Commissioner Sears: Aye

Meeting adjourned at 8:03pm.

## ***DPW Involvement & Larger Parking Plan***

In 2014, DPW, CEDO and others initiated two parking studies – one focused on the downtown and the other focused on residential areas. The goal was to develop a comprehensive understanding of parking supply and demand, and to identify optimal parking management strategies that best utilize the limited parking and land resources in the City. The downtown study specifically called for “severely reducing or eliminating surface parking lots and street-facing at grade parking, and replacing with higher or better uses – more dense development, green space, or amenities for alternative modes of transportation.” The resulting Residential Parking Management Plan and Downtown Parking and Transportation Management Plan were subsequently reviewed and accepted by a combination of the Public Works Commission and the City Council in late 2015. The Downtown Parking & Transportation Plan specifically called attention to this redevelopment project; “an example of converting a current surface lot to an increase in housing supply is the proposed Champlain College Housing project at King Street and St. Paul Street.” These efforts met the commitment CEDO made in 2007 to work on developing a plan that will replace or mitigate the loss of public parking that results from converting Browns Court parking lot to housing.

## **Revenue Impacts**

DPW has participated in planning both for itself and for the City with an eye to making sure that its Traffic Fund finances are robust going forward despite this modest reduction of metered spaces. In support of the recommended sale of the Browns Court Lot, focused attention was given in September and October of 2016 to quantify the average collection of this lot over time. Extrapolating from this sample shows an expected gross annual revenue from the Browns Court Lot of \$26,422 and an expected operating cost of \$8,345 for a projected net annual revenue of \$18,077. Past City Annual Reports don't provide individual lot collection tallies past 1959 however assuming a constant net revenue and adjusting for inflation the net earnings of the lot would have exceeded its cost in 1980. The lot since then has financially supported the City's traffic and parking activities for the last 36 years. That said, the Browns Court Parking Lot revenue is a small fraction (about half of one percent) of the parking system's \$5M annual revenue – and we expect higher utilization of surrounding meters to compensate for much of this loss. Overall, due to operational efficiencies and rate changes, Traffic Fund revenues and its net income have grown over the past several years. Moving forward, revenue from the publicly available parking retained in the lot per the Development Review Board approval will be retained by Champlain College.

## **Construction Phase**

In support of initial redevelopment activities on the Eagles Landing parcel it is expected that Champlain College will immediately purchase meter bags for the six southernmost spaces in the Browns Court lot, however the remaining 34x spaces will remain available through the holidays. Full closure of the lot and removal of City equipment is expected to begin in the first week of January 2017. In order to inform customers of these changes in a timely manner, DPW will conduct communication efforts with parkers and maintain coordination with Champlain College to identify any changes as they develop. In support of offering alternative parking for customers

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# Summary of Comments on DPW Commission Packet 12-6-16 with SJO Comments.pdf

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Page: 5

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 Author: SOVERBY      Subject: Highlight      Date: 12/5/2016 11:03:08 PM

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The value of this publicly owned property is not just in the annual parking revenue but as a land asset for the city which should be available in for city needs in perpetuity. It should not be sold outright but a long term lease granted, for a term of say 60 years. (similar to the lease term granted to president-elect Donald Trump on the Old Post Office building which has been renovated into a luxury hotel.)

 Author: SOVERBY      Subject: Highlight      Date: 12/5/2016 10:55:20 PM

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Estimate is for \$18,077 net annual revenue from the required public parking that replaces Browns Court lot is to go to Champlain College.



Because DPW has traditionally used the southern end of Browns Court for winter snow storage, the construction of improvements in that location will make it difficult for the City to maintain the street.

Since 2013, Champlain College has acquired the two houses that front Browns Court and which have vehicular access from Browns Court. Upon acquisition of the property, Champlain College will own all of the real property with frontage on Browns Court.

Because Champlain College will own all of the real property with frontage on Browns Court, Champlain College has agreed to be responsible for the maintenance of the pavement and sidewalk improvements within Browns Court under an exclusive easement of the right of way. Champlain College will also be permitted to control on-street parking on Browns Court, and to erect signage on Browns Court subject to the City's review and approval, not to be unreasonably withheld. Champlain College will not be permitted to install a gate across Browns Court without the City's consent, not to be unreasonably withheld.

#### **ct Description**

In 2013, the parties agreed to broad project goals and objectives; since then, Champlain College has obtained Burlington Development Review Board approval to construct the project, so the project is now described with reference to the DRB approval.

#### **ng:**

In 2013, the parties agreed to that the project would maintain for public use at least the same number of parking spaces currently available at the existing parking lot. Since then, Champlain College has obtained Burlington Development Review Board approval to construct the project. The DRB approval for the project requires that "spaces of on-site parking located at the Project shall be made available to the general public pursuant to the City permit conditions, of which at least 40 spaces shall be available to the general public nights, weekends, and holidays, and another 25 spaces shall be available to the general public at all times. **Unless the City has developed and is prepared to implement upon issuance of the Certificate of Occupancy for the Project a parking management strategy Champlain College shall make the on-site spaces available to the general public and self-manage the parking operation."**

In light of this requirement, the Agreement now requires Champlain College to construct and operate the project in accordance with the DRB approval.

The City has the right to continue using the property as a municipal parking lot until Champlain College is ready to commence construction.

**ouncil:** Request that the City Council approve the purchase and sale agreement and authorize the r to execute the appropriate documents contingent upon receipt by City Council of the Public s Commission recommendation.

have any questions, certainly feel free to contact me.



Author: SOVERBY      Subject: Highlight      Date: 12/5/2016 11:01:39 PM

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Does this mean that at the time of issuance of a Certificate of Occupancy for the project, if the city has a parking management strategy in place, then the city will manage the general public parking that is part of the project?



ability contained herein, is acquiring the Property in its current "as is" condition based solely on its own due diligence. Seller shall have no liability as to the failure of the Property, or any part thereof, to comply with any applicable laws and regulations, including without limitation, building codes, zoning, land use, subdivision, water supply and wastewater or Act 250. Seller affirmatively represents that Seller believes that the Property is properly zoned for the Project as herein described. The provisions of this Section shall survive Closing.

Section 2. **Purchase Price.** The purchase price (the "Purchase Price") to be paid by Buyer to Seller for the Property shall be One Million One Hundred Thousand and xx/100 U.S. Dollars (\$1,100,000.00). Buyer shall pay the Purchase Price to Seller as follows:

a. A deposit of Thirty Thousand Dollars (\$30,000.00) payable as provided in Section 3, by Buyer's check made within three (3) business days after the Seller's execution of this Agreement (the "Deposit").

b. The balance of the Purchase Price, subject to adjustment and to apportionment as set forth below, shall be paid at Closing (as defined below), by bank cashier's check, certified check or check drawn on an attorney trust account, in each case payable to Seller, or by wire transfer pursuant to written wire instructions given by Seller to Buyer no less than three (3) business days prior to the Closing.

Section 3. **Deposit.** The Deposit shall be held by Paul Frank & Collins (the "Escrow Agent") in a non-interest bearing escrow account. The Deposit shall be applied to the Purchase Price at Closing. In the event the Closing does not occur, the Deposit shall be disbursed as provided herein.

Section 4. **Closing Conditions.** Seller's obligation to close shall be conditioned upon the following "Seller's Closing Conditions":

a. **Burlington City Council Approval.** Seller's receipt of approval for the transaction described by this Agreement from Burlington City Council.

b. **Development Agreement.** At Closing, Buyer and Seller shall execute a Development Agreement in the form attached hereto as **Exhibit B** and made a part hereof.

c. **Commencement of Construction.** Prior to Closing, Buyer shall provide Seller with evidence, to Seller's reasonable satisfaction of Buyer's obligation and commitment to materially commence construction of the Project on the Property within six months of the Closing Date. For purposes of this provision, the material commencement of construction requires the commencement of construction of building improvements and not only the excavation and removal of asphalt and soil.

Section 5. **Representations and Warranties.**

a. **Representations and Warranties of Seller:** Seller hereby represents and warrants to Buyer that:

i. Seller is the record owner of the Property and Buyer will be conveyed good, insurable, and marketable title to the Property at Closing, subject to Seller's ability to continue to use and operate the Property as a public parking lot after the Closing as described herein.

ii. Seller is a Vermont municipal entity, which, subject to Section 4(a) herein, has the full power and authority to enter into, execute, deliver, and consummate the transaction contemplated by this Agreement and any instruments and agreements contemplated herein. Subject to Section 4(a), Seller has taken all action required by law or by its charter to authorize

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Purchase price of One Million One Hundred Thousand dollars was set in 2013 when first plans for the project were developed and failed, according to the summary documents in the packet. This price should be re-negotiated considering three years have passed since it was originally negotiated. (However, this publicly owned land asset, a finite resource, should not be sold but leased for this private use for a term matching the anticipated lifespan of the building.)

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caused by Escrow Agent's breach of the terms of this Agreement, gross negligence, or willful misconduct.

Section 14. **Commissions and Fees.** The parties warrant and represent to each other that they have no knowledge of any real estate broker or agent to whom a commission may be payable as a result of this transaction or any such knowledge of any other finder's fees or commissions related thereto, and each party agrees to indemnify and hold harmless the other for all claims or demands of any real estate agent or broker claiming by, through, or under such party, which indemnification shall also include payment of costs and attorneys' fees incurred by a party in defense of a claim for such real estate commissions or fees.

Section 15. **Binding Contact; Governing Law.** This Agreement shall bind and inure to the benefit of the parties hereto and their respective representatives, heirs, successors and assigns. Each individual executing this Agreement represents and warrants that he or she has the requisite power and authority to execute this Agreement on behalf of the party for which he or she acted, and in doing so to bind such party to the terms and provisions hereof. This Agreement shall be governed by Vermont law (without giving effect to conflicts of laws principles), and each party hereto hereby irrevocably and unconditionally (a) submits to the personal jurisdiction of the state and federal courts situated in Chittenden County, Vermont over any suit, action or proceeding arising out of or relating to this Agreement, and (b) waives any and all personal rights under the laws of any state to object to jurisdiction within the State of Vermont or venue in the state and federal courts situated in Chittenden County, Vermont.

Section 16. **Assignment.** Neither party shall have the right to assign its rights and obligations under this Agreement to any party without first obtaining the other party's consent, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Buyer shall have right to assign, at or prior to Closing, its rights and obligations hereunder to an entity is acceptable to the City and which has been formed for the purpose of acquiring and developing the Project on the Property. Seller shall accept performance from such assignee, and Seller shall tender its required performance hereunder to such assignee, as if such assignee is the named Buyer herein. Upon Seller's request, such assignee(s) shall execute an assumption of Buyer's rights and obligations under this Agreement.

Section 17. **Further Assurances.** The parties agree to execute, acknowledge and deliver such documents, certificates or other instruments and take such other actions as may be reasonably required from time to time to carry out the intent and purpose of this Agreement.

Section 18. **Notices.** Any notice or other communication to be given hereunder shall be in writing and either hand delivered, mailed via certified mail with return receipt requested, faxed, sent by email using a secure format (e.g., pdf) or sent by nationally recognized overnight courier (e.g., Federal Express) to such party at the address or number set forth below:

If to Seller: Noelle MacKay  
Director of Community and Economic Development Office  
City Hall, Room 32  
149 Church Street  
Burlington, Vermont 05401  
Tel: (802) 865-7154  
Email: nmackay@burlingtonvt.gov

with a copy to: Jeremy Farkas, Esq.  
Murphy Sullivan Kronk



Author: SOVERBY      Subject: Highlight      Date: 12/5/2016 11:09:04 PM

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If this collection of agreements is between the city and Champlain College, and the goodwill of Champlain College is being used to sell this arrangement to to city residents and taxpayers, it's not appropriate for Champlain College to have the right to transfer its rights to someone else to develop the property, requiring the city to "tender it's required performance herunder to such assignee, as if such assignee is [Champlain College]."

## DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is made on \_\_\_\_\_, 2016 by and between the **City of Burlington**, a municipal corporation situated in Chittenden County, Vermont (the "City") and **Champlain College Incorporated**, a Vermont non-profit educational corporation with its principal place of business in Burlington, Vermont (the "College").

### Background

- A. The College owns a parcel of land adjacent to the Property numbered 194 St. Paul Street which it acquired by deed recorded in Volume 1040 at Page 38 of the City of Burlington Land Records ("194 St. Paul").
- B. By Warranty Deed of even date with this Agreement, the City has conveyed the College two parcels of land measuring 0.357 acres and 0.04 acres, respectively, comprised of open land and a surface parking lot, identified by the City of Burlington as Parcel Nos. 049-3-027-000 (0.357 acres) and 049-3-041-000 (0.04 acres), and known as and numbered 1 Browns Court and 14 Browns Court, Burlington, Vermont (the "Property").
- C. The City's agreement to sell and transfer the Property to the College was conditioned, in part, on the execution of this Development Agreement at Closing.

Now Therefore, in consideration of the foregoing and the mutual covenants and agreements herein set forth, and in reliance on the representations and warranties contained herein, the parties hereby agree as follows:

1. Construction of Project. The College represents that it has merged the Property with 194 St. Paul to create a single, undivided parcel of land, referred to herein as the "Combined Property". The College shall construct the improvements on the Combined Property in accordance with the terms and conditions of the Burlington Development Review Board approvals numbered 14-0671CA/MA, 14-0672CA/MA and 14-0721CA/MA, as modified by Consented To Order dated March 16, 2015 executed by the State of Vermont Superior Court, Environmental Division, in the matter captioned *In Re: Appeal of Eagles Place, LLC*, Docket No. 55-4-14 Vtec, as the same may be modified or amended from time to time (which improvements are referred to herein as the "Project").

2. City Improvements. The voters of the City of Burlington have approved the expenditure of funds within the City of Burlington's Downtown TIF District to perform and construct infrastructure improvements in the vicinity of the Combined Property that will benefit the Combined Property, including, without limitation, streetscape, lighting, stormwater, utilities and transportation upgrades (collectively, the "Improvements").

3. Development Fee. The College acknowledges and agrees that the City's construction of the Improvements will benefit the Combined Property and the Project, and in order to induce the City to construct the Improvements and to induce the City to transfer and convey the Property to the College in accordance with the Purchase and Sale Agreement referenced above, the College agrees that beginning on July 1, 2017 and then continuing annually on July 1 of each year for a term of twenty (20) years through and including July 1, 2036, the College shall pay the City an annual development fee in the amount of \$260,000 in a lump sum for the purpose of providing the City with an additional source of funds from which to service the debt instruments used by the City to finance the cost of constructing the Improvements and for other related costs associated with the City's administration of its Downtown Tax Increment Finance District (the "Development Fee").



Author: SOVERBY      Subject: Highlight      Date: 12/5/2016 9:53:38 AM

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Annual development fee of \$260,000 for 20 years. This amount should not remain static for 20 years but should increase by a percentage each year to account anticipated increases in municipal tax rate.



#### Fee for Services.

a. Obligation. The College agrees, for itself and its successors and assigns, that in order to provide the City with an additional source of funds from which to pay for the provision of municipal services to the improvements constructed on the Combined Property from time to time (including, without limitation, the Project), in the event the Combined Property is ever owned in whole or in part by an entity that is statutorily exempt from property taxation or that is subject to statutorily limited or reduced property taxation (an "Exempt Owner", which term includes, without limitation, Champlain College Incorporated), it shall be an obligation of such Exempt Owner to pay a fee to the City in the consideration of the City's provision of municipal services to the Project and the Combined Property ("Fee for Services") upon and subject to the terms and conditions set forth in this Agreement.

b. Fee for Services Calculations and Payment Dates. Beginning on July 1, 2017 and then continuing annually for a term of twenty (20) years through and including fiscal year 2036-37 which ends June 30, 2037, the College shall pay the City an annual Fee for Services payment calculated in accordance with this Section 4(b). The annual amount of Fee for Services payment due and payable on the Combined Property in accordance with this Section 4(b) will be determined by multiplying (i) the assessed valuation of the Combined Property and the Project, meaning their fair market value at such time assessed for the common level of appraisal in the City of Burlington for similarly situated property, as determined by the City, net of the existing taxable value for real property owned by an exempt or partially exempt entity, multiplied by (ii) twenty-five percent (25%) of the municipal tax rate for the City of Burlington applicable to commercial and non-homestead real property. The Fee for Services payment required by this Section 4(b) shall be due and payable concurrently with real property taxes in the City of Burlington, and when delinquent shall bear interest at the legal rate, which is currently 12% per annum. Currently real property taxes in the City of Burlington are due and payable in quarterly installments due August 12<sup>th</sup>, November 12<sup>th</sup>, March 12<sup>th</sup> and June 12<sup>th</sup>.

c. Additional Fee for Services Payment. Beginning on July 1, 2037 and then continuing annually on July 1 of each year, the College shall pay the City an annual Fee for Services payment in the amount of \$260,000 in a lump sum for the purpose of providing the City with an additional source of funds from which to defray the costs of providing municipal services to the Combined Property.

d. The City may, in its sole discretion, use the payments received pursuant to this Section 4 as a source from which to pay debt service and related costs for projects located within its Downtown Tax Incremental Finance District.

#### Dispute Resolution.

a. In the event the Exempt Owner disputes the City's determination of the fair market value of the Combined Property and Project and the parties cannot negotiate and agree upon a resolution of such dispute, then the dispute shall be subject to a binding determination made by a "qualified appraiser" to establish such fair market value in accordance with the procedures set forth below, which shall be initiated upon the City's receipt of a written request therefor sent by the Exempt Owner. If the parties do not agree to an appraiser, the appraiser shall be selected as follows: within ten (10) days of the date of the City's receipt of the Exempt Owner's written request for a binding determination, the parties shall exchange a list of three (3) acceptable and qualified appraisers and the first person to appear on both lists shall be selected as the arbitrator. A "qualified appraiser" means an MAI appraiser licensed in the State of Vermont with at least five (5) years' experience appraising commercial properties in Chittenden County, Vermont that are similar to the then-existing improvements constructed on the Combined Property. In the event the selected appraiser declines to undertake the appraisal, or if no appraiser appears on both lists,



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 Author: SOVERBY    Subject: Highlight    Date: 12/5/2016 11:22:45 PM

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I don't understand this calculation. What is the purpose using fair market value "net of the existing taxable value for real property owned by an exempt or partially exempt entity"? Is document trying to set the fee for services rate at 25% of commercial property tax rate but reduce the basis upon which that rate is applied? Explain how the calculation would work if the property was assessed at the \$633,123 net sales price?

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 Author: SOVERBY    Subject: Highlight    Date: 12/5/2016 10:00:23 AM

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Starting July 1, 2037, College pays \$260,00 annual fee for municipal services. This should not be set as a static amount 20 years from now as there is no way to know what the College's situation or the City's situation might be at that time. Fee for service payments should be based upon the tax rates and property values in 2037.

## REIMBURSEMENT AGREEMENT

This Reimbursement Agreement ("Agreement") is made as of \_\_\_\_\_, 2016, by and between the **City of Burlington**, a municipal corporation situated in Chittenden County, Vermont (the "**Seller**") and **Champlain College Incorporated**, a Vermont non-profit educational corporation with its principal place of business in Burlington, Vermont ("the "**Buyer**"). Each of Buyer and Seller are a "party" to this Agreement, and they are sometimes collectively referred to as the "parties."

Whereas, Seller and Buyer are parties to a Purchase and Sale Agreement dated \_\_\_\_\_, 2016 (the "Contract") for the purchase of two parcels of land measuring 0.357 acres and 0.04 acres, respectively, comprised of open land and a surface parking lot, identified by the City of Burlington as Parcel Nos. 049-027-000 (0.357 acres) and 049-3-041-000 (0.04 acres), and known as and numbered 1 Browns Court and 14 Browns Court, Burlington, Vermont (the "**Property**");

Whereas, the Contract recites that environmental investigations of the Property indicate that polycyclic aromatic hydrocarbons (PAHs) and arsenic are present in the soil in excess of permissible levels, and that construction of the Project (as defined therein) will require the removal and disposal of such soils, together with "urban fill" material, at an approved facility in accordance with a Corrective Action Plan prepared by KAS, Inc. dated June 4, 2015 (Project #508130310) which has been submitted to the Vermont Department of Environmental Conservation ("DEC") for approval (the "**CAP**"), and Seller has agreed to reimburse Buyer for the cost of implementing the CAP with respect to the Property, including, but not limited to, soil analysis, removal and disposal, as well as reasonable administrative and legal fees associated with implementing the CAP, up to the maximum amount of \$633,438.50 (the "**Maximum Cost of the Work**");

Whereas, Buyer intends to enter into a contract (or contracts) with H. P. Cummings Construction Co., a Massachusetts corporation, to implement the CAP with respect to the Property with an estimated full value of \$466,877.00 (the "**Estimated Cost of the Work**"). The CAP will be implemented after the closing on the purchase and sale of the Property pursuant to the Contract (the "**Closing**"). Buyer desires to obtain Seller's agreement to reimburse Buyer for the cost of implementing the CAP with respect to the Property up to the Maximum Cost of Work.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereto agree as follows:

1. **Reimbursement of the Cost of the Work.** Seller shall reimburse Buyer for the cost of implementing the CAP with respect to the Property as follows: Seller shall reimburse Buyer an amount up to the Estimated Cost of the Work; once Seller has paid the full amount of the Estimated Cost of the Work, then Seller and Buyer shall each pay one-half of any additional cost of implementing the CAP with respect to the Property, provided that Seller's total liability shall be limited to the Maximum Cost of the Work. Seller's liability and obligation to reimburse Buyer for the cost of implementing the CAP with respect to the Property shall be limited to the Maximum Cost of the Work under and pursuant to this Agreement. Except as specifically set forth in this Agreement, Seller shall have no liability or obligation arising from or with respect to Buyer's efforts to remediate the Property. In no event shall Seller have any liability or obligation arising from or with respect to the remediation of environmental conditions on the former "Eagles Club" property, numbered 194 St. Paul Street, which is adjacent to the Property and which Buyer intends to develop together with the Property as a single, unified development project.

2. **Reimbursement Payments.** Seller shall make reimbursement payments to Buyer, but only after Buyer has provided Seller with evidence to Seller's reasonable satisfaction that: (a) the DEC has approved the CAP; (b) Buyer has entered into a contract to perform the work that implements the approved CAP; (c) the work has been completed; (d) the contractors performing the work have been paid; and (e) the performance of the work has been accepted by the DEC consistent with the Property's enrollment in the Brownfields Reuse and Environmental Limited Liability Protection Act program (the "**Buyer Deliverables**"). Seller shall make reimbursement payments to Buyer within thirty (30) days of

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 Author: SOVERBY      Subject: Highlight      Date: 12/5/2016 11:20:11 PM

Expect \$466,877 of proposed \$1.1 million sales price will be spent on CAP remediation of the property. Net revenue to city for sale would then only be \$633,123.

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 Author: SOVERBY      Subject: Highlight      Date: 12/5/2016 10:48:18 AM

Seller reimburses buyer for remediation.

## CONDITIONS OF GRANT

consideration of the Easements granted by this Easement Deed and Agreement (“Agreement”) and the mutual promises contained in this Agreement, the receipt and sufficiency of which is acknowledged, the Grantor and the Grantee agree that the Easements granted by this Agreement are granted upon and subject to the following terms and conditions:

**Use of the Improvement Easement.** The Improvement Easement is granted solely for the construction, maintenance, repair, replacement, operation and beneficial use of a terrace, a retaining wall, a stairway, a ramp, landscaping and related and appurtenant improvements, all of which shall be constructed and maintained in accordance with and subject to the terms and conditions of Burlington Development Review Board approvals numbered 14-0671CA/MA, 14-0672CA/MA and 14-0721CA/MA and the plans and drawings approved thereby, as modified by Consented To Order dated March 16, 2015 executed by the State of Vermont Superior Court, Environmental Division, in the matter captioned *In Re: Appeal of Eagles Place, LLC*, Docket No. 55-4-14 Vtec, as such approvals may be modified or amended from time to time (the “Approvals”). Subject to the terms and conditions of this Agreement, the Improvement Easement may be used by Grantee, its successors and assigns, and its and their respective tenants, licensees, invitees, agents and contractors and the occupants of the Eagles Landing Property (as such term is defined below).

**Eagles Landing Project.** The Improvement Easement shall only be used as an appurtenance to the combined parcel of land formerly known as and numbered 1 Browns Court, 14 Browns Court and 194 Paul Street, Burlington, Vermont, which Grantee acquired by (a) Deed recorded in Volume 1040 at Page 38 of the City of Burlington Land Records and by (b) Warranty Deed from the City of Burlington of the same date with this Agreement, which combined parcel is referred to herein as the “Eagles Landing Property”. **Grantee intends to construct on the Eagles Landing Property a multi-family residential project that includes commercial retail space and on-site structured parking (the “Eagles Landing Project”) constructed in accordance with and subject to the terms and conditions of the Approvals.**

**Use of the ROW Easement.** The ROW Easement is granted solely for the purpose of maintaining (including without limitation, snow plowing, sanding, salting and snow and ice removal), repairing and replacing the street and sidewalk improvements (including pavement and curbing) situated within the Browns Court right-of-way, for on-street parallel parking – at Grantee’s sole option – to benefit adjacent real property owned by Grantee or its wholly-owned subsidiaries, for physical access to and from benefited real property identified below in this paragraph and for no other purpose. Grantee shall not install any gate across the Browns Court right-of-way and will not install any signage within the Browns Court right-of-way in each case without the Grantor’s prior written consent, which consent shall not be unreasonably withheld. Grantee covenants and agrees that during the term of this Agreement, Grantee shall be solely responsible and obligated for the maintenance, repair and replacement of the street and sidewalk improvements situated within the Browns Court right-of-way. The ROW Easement is granted for the benefit of the Eagles Landing Property, the Eagles Landing Project, the real property numbered 8 Browns Court, the real property numbered 10-12 Browns Court, the real property numbered 123 King Street, the foregoing parties’ respective tenants and invitees, and for others who use the Browns Court right-of-way (including, without limitation, for mail and package deliveries). **Grantee acknowledges that Browns Court and 10-12 Browns Court are presently owned by Eagles Place LLC, which is a wholly-owned subsidiary of Grantee.** Grantor reserves such rights and easements as may be necessary and reasonable for the operation, maintenance, repair and replacement of any and all electrical and water/sewer utility infrastructure, including without limitation utility poles, wires, electrical equipment, pipes, pumps, storm drains located within the ROW Easement area, and the ROW Easement is granted subject to



Author: SOVERBY      Subject: Highlight      Date: 12/5/2016 10:34:09 PM

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Is the Eagles Landing Project to be built on the combined properties, identified here as "a multi-family residential project that includes commercial retail space" a project that serves a college function?



Author: SOVERBY      Subject: Highlight      Date: 12/5/2016 10:53:15 AM

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Eagles Place LLC owns 8 Browns Court and 10-12 Browns Court. A wholly owned subsidiary of Champlain College.



**LICENSE AGREEMENT**  
**EAGLES LANDING PROJECT**  
**ST. PAUL STREET, KING STREET AND MAPLE STREET**

This LICENSE AGREEMENT (“Agreement”) is made by and between the **City of Burlington**, a municipal corporation organized and validly existing under the laws of the State of Vermont hereinafter “CITY”) and **Champlain College Incorporated**, a Vermont non-profit educational corporation with its principal place of business in Burlington, Vermont (hereinafter “LICENSEE”).

WHEREAS, the CITY owns the public rights-of-way for St. Paul Street, King Street and Maple Street, including the lands adjacent to and situated to the north, west and south of the combined parcel of land formerly known as and numbered 1 Browns Court, 14 Browns Court and 194 St. Paul Street, Burlington, Vermont, which LICENSEE acquired by (a) Deed recorded in Volume 040 at Page 38 of the City of Burlington Land Records and by (b) Warranty Deed from the City of Burlington of even date with this Agreement, which combined parcel is referred to herein as the “Eagles Landing Property”; and

WHEREAS, LICENSEE has agreed to develop and construct apartment-style housing for its students, together with ground floor retail uses and underground parking, on the Eagles Landing Property (the “Eagles Landing Project”) in accordance with and subject to the terms and conditions of Burlington Development Review Board approvals numbered 14-0671CA/MA, 14-0672CA/MA and 14-0721CA/MA and the plans and drawings approved thereby, as modified by Consented To Order dated March 16, 2015 executed by the State of Vermont Superior Court, Environmental Division, in the matter captioned *In Re: Appeal of Eagles Place, LLC*, Docket No. 55-4-14 Vtec, as such approvals may be modified, amended or replaced from time to time (the “Approvals”); and

WHEREAS, the Eagles Landing Project, as permitted and approved by the Approvals, contemplates the construction and maintenance of landscaping and site improvements within portions of the rights-of-way for St. Paul Street, King Street and Maple Street adjacent to the Eagles Landing Property, and LICENSEE proposes to license from the CITY portions of the rights-of-way for St. Paul Street, King Street and Maple Street abutting the Eagles Landing Property in order to **exclusively occupy them** to construct and maintain landscaping and improvements appurtenant to LICENSEE’s use of the Eagles Landing Property; and

WHEREAS such uses would promote greater economic vitality in that area of St. Paul Street, King Street and Maple Street; and

WHEREAS, the Department of Public Works has reviewed the proposal and determined that the activities and needs of the CITY for these rights-of-way will not be impaired by the construction, use, repair, replacement and maintenance of the Eagles Landing Project as permitted and approved by the Approvals provided such activities are conducted in conformance with the conditions established by this Agreement; and



Author: SOVERBY    Subject: Highlight    Date: 12/5/2016 10:47:32 PM

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"exclusively occupy them"-->.the rights of way on St. Paul, King Street and Maple Street? No public access?  
Champlain College only?